

Lon A. Jenkins (4060)
Tami Gadd-Willardson (12517)
MaryAnn Bride (13146)
Katherine T. Kang (14457)
OFFICE OF THE CHAPTER 13 TRUSTEE
405 So. Main Street, Suite 600
Salt Lake City, Utah 84111
Telephone: (801) 596-2884
Facsimile: (801) 596-2898
Email: utahtrusteemail@ch13ut.org

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

In re:	Case No. 18-20236
MARK R. KIRKLAND	Chapter 13
Debtor.	Hon. R. Kimball Mosier
	<i>(Confirmation Hearing: April 24, 2018)</i>

**CHAPTER 13 TRUSTEE'S MOTION TO DISMISS UNDER 11 U.S.C. § 1307(c)
BECAUSE UNSECURED DEBT EXCEEDS CHAPTER 13 LIMIT**

Lon A. Jenkins, Chapter 13 Trustee hereby moves for an order of dismissal because it appears that the Debtors do not qualify for Chapter 13 relief under the secured debt limits of § 109(e). In support thereof, the Trustee represents as follows:

FACTS

1. The Debtor filed the Chapter 13 petition for relief on January 12, 2018.
2. The bar date to file non-governmental proofs of claim is March 23, 2018 and for governmental proofs of claim on July 11, 2018.
3. The Debtor's plan has not yet been confirmed as the Confirmation Hearing is

scheduled for April 24, 2018.

4. The Debtor's Schedules E/F list a total of \$32,876.18 in unsecured debt.
5. The Debtor's filed unsecured claims as of March 28, 2018 have a total \$965,488.77 in unsecured debt – claim 6 filed by CalRecycle having been the largest unsecured claim at \$936,413.29 as a priority claim.
6. To date, no objection to claim 6 – CalRecycle has been filed.
7. Specifically, the Debtor's filed unsecured claims exceed the secured debt limits of § 109(e).

ARGUMENT

The Debtor's case should be dismissed because his secured debts exceed the debt limits of § 109(e). Section 109(e) provides that “[o]nly an individual with regular income that owes, on the date of the filing of the petition, non-contingent, liquidated, unsecured debts of less than \$394,725 and non-contingent, liquidated, secured debts of less than \$1,184,200 may be a debtor under Chapter 13 of this title.” Pursuant to Federal Rule of Bankruptcy Procedure 3001(f) a filed claim is *prima facie* evidence of the validity and amount of the claim. Thus as of date of this motion, the Debtor's unsecured debt liability exceeds the statutorily defined debt limit. The Trustee requests the Debtor's case be dismissed.

THEREFORE, unless the Debtor establishes that he qualifies for Chapter 13 relief under § 109(e), the Trustee moves for an order dismissing this case.

DATED: March 26, 2017.

/s/ Tami Gadd-Willardson
Tami Gadd-Willardson
Attorney for Chapter 13 Trustee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 10, 2018 a true and correct copy of the foregoing paper was addressed to the following persons and deposited in the U.S. Mail, first-class postage prepaid.

MARK R. KIRKLAND
10044 S STONE MOUNTAIN COVE
SANDY, UT 84092

LEE J. DAVIS
ECF NOTIFICATION

/s/ Michelle Moses
Office Chapter 13 Trustee